ACT No. X OF 1916.

An Act to prohibit or control trading by hostile foreigners and hostile firms and for other purposes.

WHEREAS it is expedient to take powers further to prohibit or control trading by hostile foreigners and hostile firms and for other purposes; It is hereby enacted as follows:—

Short title and duration.

1. (1) This Act may be called the Enemy Trading Act, 1916.

(2) It shall remain in force during the continuance of the present war, and for a period of six months thereafter.

Definitions.

2. In this Act—

"company" means any company, firm or association, or body of individuals whether incorporated or not;

"hostile foreigner" means a subject of a State for the time being at war with His Majesty, and includes any company constituted according to the laws of such State, and the ruler or Government of any such State; and

"hostile firm" means any of the following, namely:—

(*a*) any hostile foreigner who has, or at any date subsequent to the 3rd day of August, 1914, had, an office, agency or place of business in British India;

(*b*) any company of which any member or officer is a hostile foreigner, or of which a hostile foreigner was a member or officer on the 3rd day of August, 1914, and which has or has had since that date an office, agency or place of business in British India;

(*c*) any person, or company who or which has, at any time since the 3rd day of August, 1914, carried on business in British India, and whose business is, or was, in the opinion of the Governor General in Council, either by reason of its nature or of the persons who carry or carried it on, or for any other cause whatsoever, carried on either under the control whether direct or indirect of any hostile foreigner, or carried on wholly or mainly for the benefit of hostile foreigners generally, or any class of hostile foreigners or any individual hostile foreigner.

Power to appoint Inspectors.

3. (1) The Governor General in Council may, by general or special order, appoint Inspectors for the purpose of determining whether any business is or was carried on by a hostile firm within the meaning of this Act.

(2) The Inspector may summon before him any person whom he believes to be capable of giving information concerning the trade, dealings, affairs or property of such business, and of the antecedents and nationality of those by whom it is or was carried on or controlled.

(3) The Inspector may examine such person on oath concerning the same, and may reduce his answers to writing, and require him to sign them.

(4) The Inspector may require such person to produce any documents in his custody or power in any way relating to such business or to the persons by whom it is or was carried on or controlled.

(5) If any person so summoned refuses to come before the Inspector at the time appointed, the Inspector may cause him to be apprehended and brought before him for examination.

(6) If any person refuses to answer any question or to produce any document which under this section the Inspector is empowered to ask or require production of, such person shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Power to prohibit or restrict, or wind up hostile firms.

4. (1) The Governor General in Council may make an order either—

(*a*) prohibiting any hostile firm from carrying on business, except for the purposes and subject to the conditions, if any, specified in the order; or

(*b*) requiring the business of such firm to be wound up; and may in any case, where he has made an order prohibiting or limiting the carrying on of the business, at any time, if he thinks it expedient, substitute for that order an order requiring the business to be wound up.

(2) Every order made under sub-section (1) shall be published by notification in the *Gazette of India*.

(3) If any person contravenes the provisions of any order made under this section, he shall be punishable with imprisonment which may extend to one year, and shall also be liable to fine.

(4) An order made under this section shall continue in force, notwithstanding the termination of the present war, until determined by order of the Governor General in Council.

5. (1) Where the Governor General in Council makes an order under this Act requiring a business to be wound up, the order shall, on notification in the *Gazette of India*, have effect as if it were a winding up order made by a Court under the Indian Companies Act, 1913, and the provisions of that Act relating to winding up by the Court and the rules made thereunder subject to such exceptions, restrictions, extensions, modifications and adaptations as the Governor General in Council may, by general or special order, prescribe, or such other rules as may be prescribed by him, shall apply to the winding up of the business:

Winding up order.

Provided that, for the purposes of any winding up order under this Act, all powers exercisable by the Court under the said Indian Companies Act shall be exercisable by the Governor General in Council, or by such other authority as he may appoint either generally or specially in that behalf:

Provided also that the assets of the business and any money resulting from the realization of any part thereof shall be dealt with in accordance with such rules as the Governor General in Council may make in that behalf.

(2) Where an order has been made under this Act directing the winding up of the business of a hostile firm, the hostile firm shall not, nor shall any other person, commence or initiate, whilst that order remains in force, any other proceedings of a like nature or calculated in any way to interfere with the carrying out of such order.

6. (1) Where it appears to the Governor General in Council that a contract entered into before or during the war, or a transfer of property, moveable or immoveable, made during the war, with or by a hostile foreigner or a hostile firm is injurious to the public interest, or was made with the object of evading any provision of the law, the Governor General in Council may by order cancel or determine such contract, either unconditionally or upon such conditions as he thinks fit, or declare such transfer to be void either in whole or in part, or may impose such conditions on the transferee as he thinks fit.

Contracts or transfers against the public interest.

(2) The powers conferred by sub-section (1) in respect of transfers of property shall be exercisable also in respect of any subsequent transfer or sub-transfer which, in the opinion of the Governor General, is injurious to the public interest or was made with the object of evading the law.

(3) On the making of an order under this section declaring any transfer or subsequent transfer or sub-transfer to be void, all property, the transfer of which is declared void by such order, shall, with effect from the date of the order, be deemed to be re-vested in the original transferor, or, if a winding up order has been made under section 4 (1) (*b*), in the liquidator.

7. (1) The Governor General in Council, in any case where it appears to him to be expedient to do so, may by order vest in any Custodian appointed under the Enemy Trading Act, 1915, any property, moveable or immoveable, belonging to, or deemed to be vested in, or managed or held whether in trust or otherwise, for, or on behalf of, a hostile foreigner, a hostile firm, or any person or company residing in, or carrying on business in the dominions of, a State at war with His Majesty, or the right to transfer that property, and may by any such order or any subsequent order confer on the Custodian such powers of selling, managing and otherwise dealing with the property as to the Governor General in Council may seem proper.

Power of the Governor General in Council to vest property in Custodian under the Enemy Trading Act, 1915.

(2) A vesting order under this section shall, notwithstanding the provisions of any other law to the contrary, be sufficient to vest in the Custodian any property or the right to transfer any property as provided by the order without the necessity of any further document.

(3) Where, in the exercise of the powers conferred on him by the Governor General in Council, the Custodian proposes to sell any shares or stock forming part of the capital of any company or any securities issued by the company in respect of which a vesting order under this Act has been made, the company may, with the consent of the Governor General in Council, purchase the shares, stock or securities, notwithstanding anything to the contrary in any law or in any regulation of the company, and any shares, stock or securities so purchased may, from time to time, be re-issued by the company.

(4) The transfer by the Custodian of any property shall be conclusive evidence in favour of the transferee and of the Custodian that the requirements of this section have been complied with.

(5) All property vested in the Custodian under this section and the proceeds of the sale of, or money arising from, any such property, shall be dealt with by him in accordance with such directions as he may receive from the Governor General in Council; and no such property or money shall be liable to be attached or otherwise taken in execution.

Validity of vesting orders.

8. Where a vesting order has been made under this Act as respects any property belonging to, or held or managed for, or on behalf of, a person who appeared to the Governor General in Council to be a person to whom the provisions of section 7 were applicable, the order shall not, nor shall any proceedings thereunder or in consequence thereof be invalidated or affected by reason only of such person having, prior to the date of the order, died or ceased to be a person to whom the said provisions were applicable, or subsequently dying or ceasing to be such a person or by reason of its being subsequently ascertained that he was not such a person, as the case may be.

Registration of transfer without production of certificates, etc.

9. Where the Custodian executes a transfer of any shares, stock or securities which he is empowered to transfer by a vesting order made under this Act, the company in whose books the shares, stock or securities are registered shall, upon the receipt of the transfer so executed by the Custodian, and upon being required by him so to do, register the shares, stock or securities in the name of the Custodian or other transferee, notwithstanding any regulation or stipulation of the company, and notwithstanding that the Custodian is not in possession of the certificate, scrip or other document of title relating to the shares, stock or securities transferred ; but such registration shall be without prejudice to any lien or charge in favour of the company or to any other lien or charge of which the Custodian has express notice.

Power to make rules.

10. (1) The Governor General in Council may make rules for all or any of the following purposes, namely :—

(*a*) providing for the distribution or disposal of any assets, or any money resulting from the realization of any part thereof, of any business in respect of which a winding up order has been made under this Act ;

(*b*) prescribing that hostile foreigners and hostile firms or any class of hostile foreigners or hostile firms shall, when required by the Custodian, furnish to him such particulars as he may require of all or any moveable or immoveable property in their possession, or under their control whether direct or indirect ;

(*c*) requiring persons in British India to furnish to the Custodian such particulars as he may require of all or any class of debts or other property due by them to any person to whom the provisions of section 7 are or may be applicable ;

(*d*) prescribing the remuneration payable to the Custodian in respect of his duties under this Act, the fund from which it shall be paid, and the method of collecting the same ; and

(*e*) generally for carrying out the purposes of this Act.

(2) In making any rule under this section, the Governor-General in Council may direct that a breach of it shall be punishable with imprisonment which may extend to a term not exceeding six months, or with fine which may extend to one-thousand rupees, or with both.

Certain licenses under the Hostile Foreigners (Trading) Order to be deemed to be orders issued under section 4 (1) (*a*).

11. Every license for the time being in force granted under the Hostile Foreigners (Trading) Order permitting the licensee to trade or carry on business subject to conditions or restrictions shall be deemed to be an order made under section 4 (1) (*a*), and this Act shall have effect accordingly.

Power to deal with non-trading companies.

12. (1) The Governor General in Council may, by notification in the Gazette of India, declare that the powers conferred by section 7 in regard to the property, moveable or immoveable, of the persons referred to therein shall extend to the property, moveable or immoveable, in British India, of any company specified in such notification of which any member is a hostile foreigner, or of which a hostile foreigner was a member or officer on the 3rd day of August, 1914, notwithstanding that such company is not a company trading in British India.

(2) On the publication of a notification under sub-section (1), the company shall be deemed to be a person referred to in section 7 of this Act, and this Act shall have effect accordingly.

Validation of past action.

13. Any act done after the 3rd day of August 1914 by, or under the orders of, any officer of Government in respect of the property, moveable or immoveable, of any hostile foreigner or hostile firm which, if this Act had been in force, could have been validly done in the exercise of the powers conferred thereby, or which could have been conferred thereunder, is hereby validated.

Repeal of Ordinance V of 1916.

14. The Enemy Trading Ordinance, 1916, is hereby repealed.

(Sd.) A. P. MUDDIMAN,

Secretary to the Government of India.